UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CA NO. 00-12156-MEL

ALEC S. COSTERUS,
Pro Se Plaintiff,

v.

BARRY NEAL, TIMOTHY LANDERS,
PETER HOLMAN, JOHN KENNEDY,
LEONARD J. WETHERBEE, and
TOWN OF CONCORD,
Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE OPPOSITION

The defendants, Barry Neal, Timothy Landers, Peter Holman, John Kennedy, Leonard J. Wetherbee and the Town of Concord, submit the following in opposition to the plaintiff's motion for leave to file an opposition to the defendants' summary judgment motion. As grounds therefor, the defendants state the following:

1. Plaintiff's motion is untimely. The defendants' motion for summary judgment was sent to the plaintiff via first class mail on July 10, 2003. It was also sent to the Court on that same day and entered on the docket on July 11, 2003.

2. Prior to the filing of the motion for summary judgment, counsel for the defendants on July 1, 2003, pursuant to L.R. 7.1 attempted to confer with the plaintiff regarding the filing of the motion. In said correspondence, defense counsel advised that he would be filing a motion for summary judgment as to **all** claims not just claims against Officers Holman and Kennedy as the plaintiff suggests. Defense counsel never received a response from the plaintiff to his request for a L.R. 7.1 conference. (See correspondence to plaintiff, Exhibit "A").

3. This Court, on August 21, 2003, allowed the defendants' motion for summary judgment "on the merits substantially for the reasons set forth in the defendants' memorandum in support of this motion for summary judgment."

4. The plaintiff never filed a motion for leave to file an opposition to the defendants' summary judgment motion from July 11, 2003-August 21, 2003.

5. Curiously, the cover letter accompanying the plaintiff's motion to this Court purports to be sent on September 11, 2003. The post mark on the letter sent to defense counsel however, indicates September 18, 2003 as the mailing date. (Exhibit "B"). Defense counsel did not receive said motion until September 23, 2003.

6. The fact that Mr. Costerus is *pro-se* has no bearing on the timeliness of his opposition. Mr. Costerus is well aware of the rules of civil procedure having filed numerous motions, pleadings and appeals in this instant matter. The fact that he was unable to file any opposition due to his purported busy schedule is not a sufficient basis or excusable neglect to warrant his late filing some thirty days after the allowance of the defendants' motion.

WHEREFORE, the defendants respectfully request that this Court deny the plaintiff's motion for leave to file a late opposition to the defendants' summary judgment motion and enter final judgment for the defendants in the above matter.

Defendants, Town of Concord, Barry Neal,
Timothy Landers and Peter Holman, John
Kennedy and Leonard Wetherbee
by their attorneys,

Douglas I. Louison BBO# 545191
James W. Simpson, Jr. BBO# 634344
MERRICK, LOUISON & COSTELLO
67 Batterymarch Street
Boston, MA 02110
(617) 439-0305

CERTIFICATE OF SERVICE

I, James W. Simpson, Jr., certify that on the 23rd day of September 2003, I served the foregoing on the *pro-se* plaintiff, Alex Costerus, 16577 Sweetbrush Drive, Parker, Colorado 80134-3718.

James W. Simpson, Jr.

MERRICK, LOUISON & COSTELLO, LLP
ATTORNEYS AT LAW
67 BATTERYMARCH STREET
BOSTON, MASSACHUSETTS 02110
TELEPHONE: (617) 439-0305
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July 1, 2003

COPY

Alec S. Costerus, *pro-se*
1537 Sudbury Road
Concord, MA 01742-5826

RE: Alec Costerus v. Town of Concord, et al
USDC CA No. 00-12156-MEL

Dear Mr. Costerus

As you may know, pursuant to L.R. 7.1, I am obliged to confer with you prior to the filing of any motions. To that end, I am in the process of drafting a motion for summary judgment as to all claims asserted in your complaint. While I do not expect that you will agree to voluntarily dismiss any of your claims, I am hopeful that you may at least consider dismissing Officer Holman from this action as he had little or no involvement in the incident. He did not arrest you or retrieve your firearms. At best, he was present during your booking. Likewise, Sgt. Kennedy was merely the court prosecutor assigned to process arrests. While his name appears on the application for complaints, your arrest and custody was initiated by Lt. Neal. I would request that you review your amended complaint to determine what if any, claims could be narrowed.

Thank you for your attention to these matters.

Very truly yours,

COPY

James W. Simpson, Jr.

Alec S. Costerus
16577 Sweetbrush Drive • Parker, Colorado 80134-3718
303 841 5400 303 841 5401 alec@costerus.com

EXHIBIT "B"

September 11, 2003

Mr. Tony Anastas, Clerk of the Courts
United States District Court, District of Massachusetts
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02110-3025

Re: *Costerus v. Neal, et al.*
USDC Civil Action No. 00-CV-12156 MEL

Dear Mr. Anastas:

Enclosed herewith for filing in the above-referenced action are two copies of Plaintiff's Motion for Leave to File Opposition. Please forward one copy to Sr. Judge Morris Lasker.

Thank you for your assistance in this matter. I am,

Very truly yours,

Alec S. Costerus

Enclosure

cc: James W. Simpson, Jr.

C:\Documents and Settings\Alec S Costerus\My Documents\Concord Legal\US District Court\Concord\Motions\Plaintiff's Motion for Leave to File Opposition Transmittal.wpd

Alec S. Costerus
16577 Sweetbrush Dr
Parker, CO 80134-3718

PM
SEP
2003

MARY CASSATT USA37

Mr James W Simpson Jr
Merrick Louison & Costello
67 Batterymarch St
Boston MA 02110-3206